

United States Senate
WASHINGTON, DC 20510

December 19, 2019

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Ave. NW
Washington, D.C. 20210

Dear Secretary Scalia:

We write to express our strong opposition to the Department of Labor's (DOL) proposed rule regarding tipped workers' wages. This rule is an attack on workers, reducing their paychecks by hundreds of millions of dollars, according to DOL's own cursory analysis. In doing so, the rule appears to violate pro-worker changes Congress made to the Fair Labor Standards Act (FLSA) in 2018. We urge you to rescind the proposed rule and instead issue regulations that protect workers' hard-earned wages as Congress intended.

Under the FLSA, employers may pay workers who earn tips the much lower tipped minimum wage of \$2.13 per hour as long as their total hourly wages, including their tips, are at or above the federal minimum wage of \$7.25 per hour. However, before the 2018 amendments to the FLSA, employers attempted to take workers' tips and use them for their own benefit, for example by making capital improvements in a restaurant or lowering the wages of non-tipped workers in their business. To prevent these employer abuses and in response to conflicting court decisions and DOL's 2017 proposed rule, last year Congress passed amendments to the FLSA clarifying that tips are the property of employees, not their employers.

The proposed regulation violates this recently passed legislation by allowing employers to keep tips for their own benefit in several ways. First, DOL's proposed rule explicitly states that employers can use tips to reduce other workers' wages. Second, the rule reverses the decades-old "80/20" DOL policy on tipped workers' wages that makes clear workers must be paid the full minimum wage of \$7.25 when performing non-tipped work if the employee spends more than 20 percent of the time doing non-tipped work. Additionally, the rule takes the unthinkable step of weakening enforcement of the 2018 tipped worker protections by stating that civil penalties will be applied only in the case of violations that are repeated or willful. Taken together these anti-worker provisions will allow employers to financially benefit from workers' tips at the direct expense of the workers who earn them.

Your own Department, whose mission is "to foster, promote, and develop the welfare of wage earners," acknowledges that the effect of these provisions will be to reduce workers' wages by more than \$200 million per year. That's simply wrong. Tipped work is predominantly low-wage work performed by women. It often occurs in industries already marked by frequent wage theft, and tipped workers are particularly vulnerable to sexual harassment in part due to their reliance on tips. DOL's proposed rule will make these workers' lives even more difficult by

allowing employers to keep the tips their workers have earned. We strongly urge you to rescind the proposed rule and instead issue a regulation that is consistent with the law Congress passed last year and puts workers, not employers, first.

Sincerely,



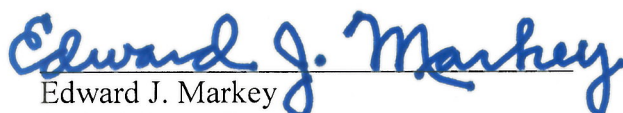
Sherrod Brown
United States Senator



Mazie K. Hirono
United States Senator



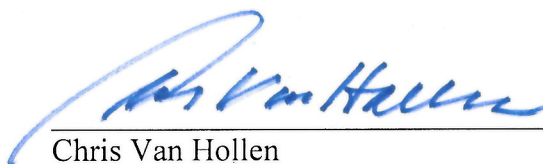
Tammy Baldwin
United States Senator



Edward J. Markey
United States Senator



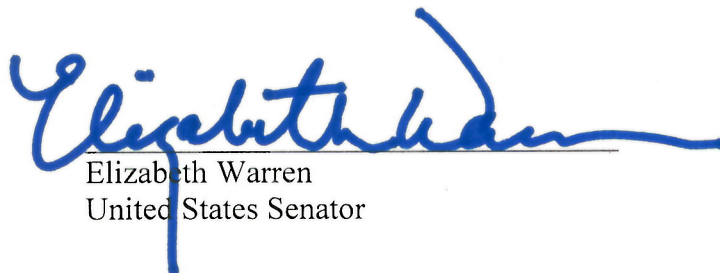
Richard Blumenthal
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Chris Van Hollen
United States Senator



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United States Senator



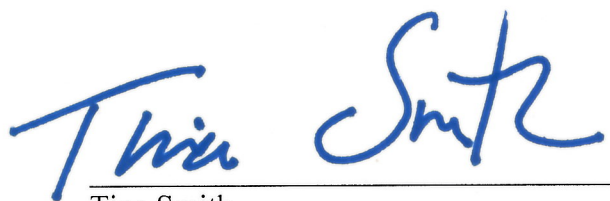
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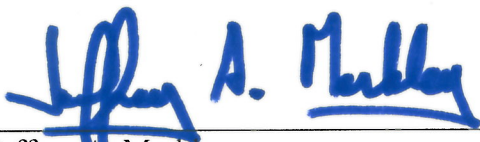
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